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10/804,697	03/19/2004	Brian M. Ray	RAY-30133	9154
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GRADY K. BERGEN 3333 LEE PARKWAY SUITE 600 DALLAS, TX 75219			ESTRADA, ANGEL R	
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			2831	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/804,697

Applicant(s)

RAY, BRIAN M.

Examiner

Angel R. Estrada

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-6, 8-17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 18 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 18 and 21 are objected to because of the following informalities:

Claim 18 lines 3-4 "the forward surface of each of the first and second plate members", lacks of antecedent basis. Claim 13 does not mention that the second plate member has a forward surface.

Claim 21 lines 15-16 "the forward surface of each of the first and second plate members", lacks of antecedent basis. The claim does not mention that the second plate member has a forward surface.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meistrell (US 2,820,842).

Regarding claim 1, Meistrell discloses a cover plate (10 or see figure 1) for a receptacle (11) or outlet device of a wall comprising: a first plate member (25) having a forward surface (see figure 5); a second plate member (39) having a thickness coupled

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to the first plate member (25) and overlaying the forward surface of the first plate member (see figure 1), the second plate member (39) having a different configuration from that of the first plate member (25, see figure 5) so that at least a portion of the forward surface of the first plate member (25) is exposed (see figure 1, notice surface 30), the forward surface of the second plate member (39) having no substantial surface-projecting element extending therefrom (see figure 5), the second plate (39) being visually distinct from the first plate member (25, see figure 1); and wherein at least one of the first and second plate members (25,39) has an opening (see figure 5) to facilitate access of the device of the wall when the cover plate (10) is mounted thereto (see figure 1 and 2); but Meistrell lacks the second plate member having a thickness of $1/32$ of an inch or more. It would have been an obvious matter of design choice to make the second plate member with a thickness of $1/32$ of an inch or more, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Furthermore, it would have been an obvious matter of design choice to make the second plate member with a thickness of $1/32$ of an inch or more, since applicant has not disclosed that a second plate member with a thickness of $1/32$ of an inch or more solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with thickness of Meistrell.

Regarding claim 2, Meistrell discloses the cover plate (10 or see figure 1), wherein: the first (25) and second plate (39) members each have a forward surface that

is different from the other (see figures 1 and 5) to provide a visually perceptible contrast between the first and second plate members (see figures 1 and 5).

Regarding claim 3, Meistrell discloses the cover plate (10 or see figure 1), wherein: the first (25) and second plate (39) members each have a forward surface that is provided with a different surface finish from the other (see figures 1 and 5) to provide a visual perceptible contrast between the first and second plate members (see figure 1 and 5).

Regarding claim 4, the modified Mesitrell discloses the cover plate (10 or see figure 1), wherein the second plate member (15) has a thickness of from 1/16 of an inch or more (see figure 1).

Regarding claim 5, Meistrell discloses the cover plate (10 or see figure 1), wherein the different configuration of the second plate member (39) is provided at least one of a cutout or aperture (see figures 1 and 5) formed through the thickness of the second plate member (see figures 1 and 5).

Regarding claim 9, Meistell discloses the cover plate (10 or see figure 1), wherein: each of the first and second plate members (25,39) is opaque (column 2 lines 59-61, depends on the type of material used to make the plate members).

Regarding claim 10, Meistell discloses the cover plate (10 or see figure 1), wherein: one of the plate members (25,39) has a matte forward surface and the other plate member has a non-matte forward surface (column 2 lines 59-61, depends on the type of material used to make the plates).

Regarding claim 11, Meistell discloses the cover plate (10 or see figure 1), wherein: the first and second plate members (25,39) each have sufficient thickness to provide a visually perceptible layered appearance (see figures 1 and 5).

Regarding claim 12, Meistell discloses the cover plate (10 or see figure 1), wherein the first and second plate members (25,39) are coupled together with a very high bond adhesive tape (column 3 lines 15-21).

Regarding claim 13, Meistell discloses a cover plate (10 or see figure 1) for a receptacle (11) or outlet device comprising: a first plate member (25) having a forward surface; a second plate member (39) having a thickness coupled to the first plate member (25) and overlaying the forward surface of the first plate member (25, see figure 1), the second plate member (39) having a different configuration from that of the first plate member (25, see figure 5) so that at least a portion of the forward surface of the first plate member (25) is exposed (see figure 1, notice surface 30), the forward surface of the second plate member (39) having no substantial surface-projecting element extending therefrom (see figures 1 and 5), the second plate member (39) having a sufficient thickness to provide a readily perceptible side edge and being visually distinct from the first plate member (25, see figure 5); and wherein at least one of the first and second plate members (25,39) has an opening (see figure 5) to facilitate access of the receptacle of the wall (see figure 1 and 2) when the cover plate (10) is mounted thereto (see figure 1); but Meistell lacks the second plate member having a thickness of $1/32$ of an inch or more. It would have been an obvious matter of design choice to make the second plate member with a thickness of $1/32$ of an inch or more,

since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Furthermore, it would have been an obvious matter of design choice to make the second plate member with a thickness of 1/32 of an inch or more, since applicant has not disclosed that a second plate member with a thickness of 1/32 of an inch or more solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with thickness of Meistell.

Regarding claim 14, Meistell discloses the cover plate (10 or see figure 1), wherein: the first (25) and second plate (39) members each have a forward surface that is different from the other (see figures 1 and 5) to provide a visually perceptible contrast between the first and second plate members (see figures 1 and 5).

Regarding claim 15, Meistell discloses the cover plate (10 or see figure 1), wherein: the first (25) and second plate (39) members each have a forward surface that is provided with a different surface finish from the other (see figures 1 and 5) to provide a visual perceptible contrast between the first and second plate members (see figures 1 and 5).

Regarding claim 16, the modified Meistell discloses the cover plate (10 or see figure 1), wherein the second plate member (39) has a thickness of from 1/16 of an inch or more (see figure 1 and 5).

Regarding claim 17, Meistell discloses the cover plate (10 or see figure 1), wherein the different configuration of the second plate member (39) is provided at least

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one of a cutout or aperture (see figures 1 and 5) formed through the thickness of the second plate member (see figures 1 and 5).

Regarding claim 19, Meistell discloses the cover plate (10 or see figure 1), wherein: one of the plate members (25,39) has a matte forward surface and the other plate member has a non-matte forward surface (column 2 lines 59-61, depends on the type of material used to make the plate members).

Regarding claim 20, Meistell discloses a cover plate (10 or see figure 1) for a receptacle (11) or outlet device of a wall comprising: a first plate member (25) having a forward surface; a second plate member (39) coupled to the first plate member (25) and overlaying the forward surface of the first plate member (25), the second plate member (39) having a different configuration from that of the first plate member (25, see figures 1 and 5) so that at least a portion of the forward surface of the first plate member (25) is exposed (see figure 1, notice surface 30), the first and second plate members (25,39) each have a forward surface that is provided with a different surface finish from the other to provide a visual perceptible surface contrast between the first and second plate members (see figures 1 and 5), the forward surface of the second plate member (39) having no substantial surface-projecting element extending therefrom (see figures 1 and 5), and the second plate member (39) having a thickness to provide a readily perceptible side edge and being visually distinct from the first plate member (25, see figures 1 and 5); and wherein at least one of the first and second plate members (25,39) has an opening (see figure 1 and 5) to facilitate access of the receptacle (11) when the cover plate (10) is mounted thereto (see figure 19); but Meistell lacks the second plate

member having a thickness of $1/32$ of an inch or more. It would have been an obvious matter of design choice to make the second plate member with a thickness of $1/32$ of an inch or more, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Furthermore, it would have been an obvious matter of design choice to make the second plate member with a thickness of $1/32$ of an inch or more, since applicant has not disclosed that a second plate member with a thickness of $1/32$ of an inch or more solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with thickness of Meistell.

3. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meistrell (US 2,820,842) in view of Wells (US 3,840,692).

Regarding claim 6, Meistell discloses the claimed invention except for the plate members being formed of a metal or metal alloy. Wells teaches a cover plate (10) for an electrical outlet or switches being made of metal (column 3 lines 44-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the plate members of a metal or metal alloy as taught by Wells to form the plates out of a durable and solid material and to add an aesthetically pleasing and refined appearance. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the plate members of metal or metal alloy, since it has been held to be within the general skill of a worker in the art to select

a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Regarding claim 8, Meistell discloses the claimed invention except for the plate members being formed from at least one of copper, steel, carbon steel, aluminum, bronze, nickel, tin, iron, brass, and alloys of such materials, wood, polymeric materials, leather, fabric, composite materials, clays, ceramics and glass. Wells teaches a cover plate (10) for an electrical outlet or switches being made of metal, wood or plastic (column 3 lines 44-47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the plate members of metal, wood or plastic as taught by Wells to add an aesthetically pleasing and refined appearance. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the plate members from at least one of copper, steel, carbon steel, aluminum, bronze, nickel, tin, iron, brass, and alloys of such materials, wood, polymeric materials, leather, fabric, composite materials, clays, ceramics and glass, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Allowable Subject Matter

4. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 21 would be allowable if rewritten or amended to overcome the objection under Claim Objections, set forth in this Office action.

The following is an examiner's statement of reasons for allowance: The primary reasons for the indication of the allowability of claims 18 and 21 are:

Regarding claim 18, the prior art does not teach or fairly suggest in combination with the other claimed limitations a cover plate comprising a third plate member that overlays the first and second plate members, the third plate member having a configuration that is different from that of the first and second plate members so that at least a portion of the forward surface of each of the first and second plate members is exposed, the third plate member having a sufficient thickness to provide a visually perceptible layered appearance.

Regarding claim 21, the prior art does not teach or fairly suggest in combination with the other claimed limitations a cover plate comprising: a third plate member that overlays and is coupled to the first and second plate members, the third plate member having a configuration that is different from that of the first and second plate members so that at least a portion of the forward surface of each of the first and second plate members is exposed, the third plate member being visibly distinct from the first and second plate members.

These limitations are found in claims 18 and 21, and are neither disclosed nor taught by the prior art of record, alone or in combination.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 13 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication should be directed to Angel R. Estrada at telephone number (571) 272-1973. The Examiner can normally be reached on Monday-Friday (8:30 -5:00).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (571) 272-2800 Ext: 31. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AE

March 15, 2005

 3/18/05
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